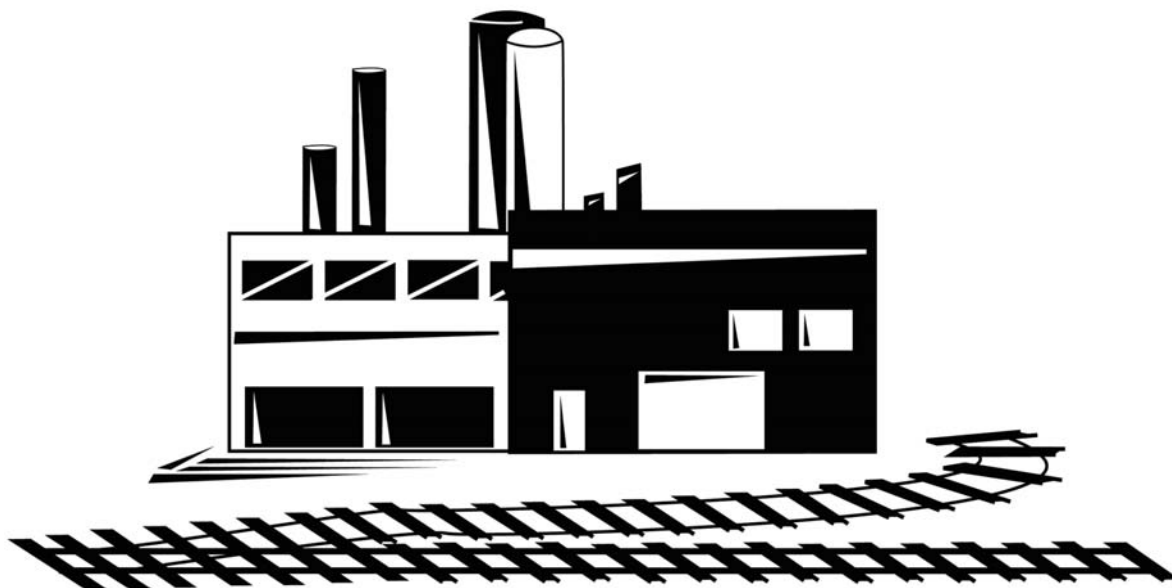


RAILROAD INDUSTRIAL ACCESS PROGRAM



2006 UPDATE

APPLICATION PROCEDURES

visit us on the web at www.drpt.virginia.gov

TABLE OF CONTENTS

INTRODUCTION

I-A	PURPOSE	3
I-B	STATE POLICY	3
I-C	PROGRAM CONTACT	3

PROGRAM ADMINISTRATION

II-A	ADMINISTRATION RESPONSIBILITY.....	4
II-B	ELIGIBLE RECIPIENTS.....	4
II-C	ELIGIBLE COST.....	4
II-D	INELIGIBLE COST.....	5
II-E	ALLOCATION OF FUNDS.....	5
II-F	EXPENDING COMMITTED FUNDS.....	6
II-G	OWNERSHIP.....	6
II-H	PURCHASING OR SELLING INDUSTRIAL ACCESS TRACKS.....	6
II-I	INDUSTRY CERTIFICATIONS OR REPAYMENTS.....	6
II-J	ACCOUNTS, RECORDS AND REPORTS.....	7
II-K	PAYMENT.....	7
II-L	PROJECT SELECTION AND IMPLEMENTATION.....	7

APPENDICES

APPENDIX A PROJECT SELECTION CRITERIA POINT SELECTION

APPENDIX B SAMPLE LOCALITY RESOLUTION

APPENDIX C AGREEMENT

APPENDIX D RIGHT-OF-WAY, MAINTENANCE AND LIABILITY CERTIFICATION

APPENDIX E APPLICATION

INTRODUCTION

I-A. PURPOSE:

The General Assembly of Virginia as enacted under Section 33.1-221.1:1 of the Code of Virginia declared its purpose for the Industrial Access Railroad Tracks Program. The General Assembly declares it to be in the public interest that access railroad tracks and facilities be constructed to certain industrial commercial sites where rail freight service is or may be needed by new or substantially expanded industry and that financial assistance be provided to areas seeking to furnish rail freight trackage between the normal limits of existing or proposed common carrier railroad tracks and facilities and the actual site of existing or proposed commercial buildings or facilities.

I-B STATE POLICY:

The Commonwealth Transportation Board on November 16, 1995 passed a resolution for the use of Industrial Access Railroad Tracks Program to provide funding which is intended to be used as an incentive to encourage industrial or commercial development in the Commonwealth of Virginia. It is not intended to fund projects that will not have a significant economic impact.

I-C PROGRAM CONTACT

Questions related to the Industrial Access Railroad Tracks Program should be directed to the Department of Rail and Public Transportation, Freight Rail Operations, Policy and Planning Section at the following address, and phone and fax numbers.

Kevin B. Page, Director of Rail Transportation
Virginia Department of Rail and Public Transportation
1313 East Main Street, Suite 300
P.O. Box 590
Richmond, Virginia 23218-0590

Telephone (804) 786-3963
FAX (804) 225-3752
email: kevin.page@drpt.virginia.gov

PROGRAM ADMINISTRATION

II-A ADMINISTRATIVE RESPONSIBILITY

The industrial access railroad track program is administered by the Director of the Department of Rail and Public Transportation (DRPT) in accordance with decisions of the Commonwealth Transportation Board. The Director may consult with the Commissioner of Agriculture and Consumer Services, the Director of the Office of Business Assistance, and the Director of the Economic Development Partnership (or their designated representatives) concerning applications for funds in accordance with the Code of Virginia. The DRPT staff will receive and process applications, make recommendations to the Board, and supervise the program and approve for payment the costs incurred and invoiced by the Grantee.

APPLICATIONS FOR FUNDING MUST BE ADDRESSED TO THE FOLLOWING:

**Matthew O. Tucker, Director
Virginia Department of Rail and Public Transportation
1313 East Main Street, Suite 300
P.O. Box 590
Richmond, Virginia 23218-0590**

II-B ELIGIBLE RECIPIENTS

The following organizations are eligible to apply for Industrial Access Railroad Track funding:

1. Business, Commercial or Industrial Enterprises
2. Municipal and County Governments may apply for funding on behalf of a business, commercial or industrial enterprise
3. Local Departments of Economic Development may apply for funding on behalf on business, commercial or industrial enterprise
4. Railroads

All applications for industrial access railroad track funds shall be discussed with the appropriate local government. Each application shall be accompanied by a resolution from the local governing body requesting that such funds be allocated to the proposed project. The Rail Industrial Access Program is coordinated with the Economic Development Partnership or the Office of Business Assistance. This effort is reflected in the project selection criteria point system.

II-C ELIGIBLE COST

Eligible project cost includes the following:

1. Site Preparation (including grading and drainage)
2. Track Construction
3. Track Reconstruction
4. Track Improvement

5. Engineering
6. Environmental Mitigation

Funds may be used to construct, reconstruct, or improve part or all of the necessary tracks and related facilities on public or private property currently used or being developed, existent or prospective, for single industries or industrial subdivisions under firm contract or already constructed, including those subdivisions owned or promoted by railroad companies and others.

II-D INELIGIBLE COST

Ineligible project cost includes the following:

1. Relocation of Utilities
2. Switches and track to clear point connecting the access track to the main line
3. Acquisition of Right-Of-Way

If the total project costs exceed the available funds for a specific project, the expenditures will be approved in the following priority order: 1) track materials, 2) installation, 3) engineering, 4) drainage, 5) grading, 6) environmental mitigation. Eligible items of construction shall be limited to those items necessary to provide adequate and safe rail service between the clear point and the industry being served.

II-E ALLOCATION OF FUNDS

No more than \$450,000 of the funds shall be allocated to any one county, town, or city in any fiscal year. No more than \$300,000 of unmatched funds may be allocated to any one project in any fiscal year. The unmatched funds may be supplemented with additional matched funds, in which case the matched state funds shall not be more than the annual locality allocation. Any funds in excess of \$300,000 shall be matched dollar-for-dollar by the recipient or from other non-program sources. The amount of industrial access railroad track funds allocated to a project shall not exceed 15 percent of the capital outlay of the designated business. The 15 percent limitation and the maximums on matched or unmatched funding may be waived at the discretion of the Board.

The Board may consider a supplementary allocation to any project, provided such supplementary allocation does not exceed the established funding limitation for the project. The Director shall have the authority to increase the allocation to any project by 10 percent due to unanticipated problems provided such increases do not exceed the funding limitation for the project.

The Board shall, in the evaluation of projects, consider the cost of construction of an access track in relation to the prospective volume of rail traffic, capital investment, potential employment, or other economic and public benefits.

II-F EXPENDING COMMITTED FUNDS

Committed industrial access railroad track funds are those funds allocated to a project but not necessarily spent in the year of allocation. Committed funds shall be expended within 24 months. The Director may extend this time limit for a reasonable period.

II-G OWNERSHIP AND THE COMMONWEALTH'S RETAINED INTEREST

The Applicant/Designated Grantee shall be contractually committed to providing the Commonwealth with a contingent interest in that portion of trackage and facilities constructed or improved with the use of industrial access railroad track funds, for the useful life of the project as determined by the Director of the Department of Rail and Public Transportation. Said portion shall be defined by the agreement. The access railroad track shall be made available for use by all common carriers using the railway system to which they connect. A certification issued by the landowner or using business stating that they will provide for the continuous maintenance and assume the liability of the tracks and facilities.

Guarantees as to the right of way and adjustment of utilities, to include their source of donation or funding shall be given by the landowner or using business.

Any cost involved in any subsequent relocation or removal of industrial access railroad track facilities shall be borne by the landowner, using business or developer. Following relocation, the Commonwealth's interest will be redefined. In case of removal, the Commonwealth will be reimbursed the value of the facilities in which it has an interest.

II-H PURCHASING OR SELLING INDUSTRIAL ACCESS TRACKS

The Commonwealth may, at its option, allow the industry; using business or developer to purchase the Commonwealth's interest in an industrial access railroad track facility at a value determined by the Director. In the event the landowner, using business or developer desires to sell their property or interest on which access tracks have been constructed under this program, said sale will be subject to the Commonwealth's vested interest and written approval.

II-I INDUSTRY CERTIFICATIONS AND REPAYMENT

The industry shall certify that it will provide the jobs and the rail traffic (carloads) indicated in the project application.

The grant recipient will be required to repay the Department its contribution to the cost of the construction and materials, less depreciation if the project tracks are abandoned, relocated or sold (without a grant assignment).

II-I INDUSTRY CERTIFICATIONS AND REPAYMENT (Continued)

The grantee will also be required to repay the Department its contribution to the cost of the access track if:

1. Rail use (carloads) for the first five years is significantly below the commitment levels specified to qualify the applicant for funding.
2. Job commitment for the first two years falls significantly below the commitment levels specified to qualify the applicant for funding.

II-J ACCOUNT RECORDS, REPORTS

The Grantee shall establish and maintain separate accounts for the project. The Grantee and its subcontractors shall retain all records pertaining to this project for three years from the date of the final payment from the DRPT.

II-K PAYMENT

The Grantee shall submit copies of the paid invoices with a letter requesting reimbursement as soon after the project has been completed as possible. However the request for payment must be within the twenty-four month contract period for expending funds. The Director may extend the contract period due to extenuating circumstances upon receipt of a request.

Once the Department has received notice that the project has been completed it shall perform a field review of the project to ensure that the project has been successfully completed. This shall be done as quickly as time permits but not later than twenty days from receiving the notice that the project has been completed.

II-L PROJECT SELECTION AND IMPLEMENTATION

The Department of Rail and Public Transportation will assemble all necessary data and documents and review the proposals. Using the procedures outlined, the Department will develop recommendations. These recommendations will be provided to the Director who will present recommendations to the Board Committee. The Board Committee will provide recommendations to the Board that will establish priorities and allocate funds for selected projects.

Following the approval of project funding, the applicants will be notified of the results. The successful applicants will be required to enter into the contractual commitments required under Item 5 of the Industrial Access Railroad Track Policy pertaining to responsibility for maintenance, liability, relocation, and removal. In projects involving the reconstruction or improvement of existing tracks or facilities, only those materials installed with the use of

industrial access railroad track funds shall become subject to the contingent interest

requirements of the Commonwealth. Ownership of materials and facilities in place prior to project implementation shall remain with the original owner.

An inspection and documentation of the work performed and materials installed will be made prior to final audit and payment.

All approved invoices will be transmitted to the Virginia Department of Transportation for payment from funds allocated for the Access Programs.

THIS AREA BLANK

APPENDIX A

PROJECT SELECTION CRITERIA POINT SYSTEM

PROJECT SELECTION CRITERIA POINT SYSTEM
 (80-100 EXCELLENT) (65-80 GOOD) (50-65 FAIR)
 UNDER 50 WILL NOT BE RECOMMENDED

1. Total Number of Carloads (Annually)
 - a. 501 or greater 20 points
 - b. 401 to 500 17 points
 - c. 301 to 400 14 points
 - d. 201 to 300 11 points
 - e. 101 to 200 8 points
 - f. 100 or less 5 points

2. Added Employment
 - a. 101 or greater 20 points
 - b. 76 to 100 17 points
 - c. 51 to 75 14 points
 - d. 26 to 50 11 points
 - e. 25 or less 8 points

3. Commonwealth's Portion of Track Construction per Initial Capital Investment Cost
 - a. 0.03 or less 10 points
 - b. 0.04 to 0.06 8 points
 - c. 0.07 to 0.10 6 points
 - d. 0.11 to 0.14 4 points
 - e. 0.15 2 points

4. Jurisdictional Unemployment Rate (Statewide Unemployment Rate [R])
 - a. (R + 2.5) or greater 20 points
 - b. (R + 2.0) to (R + 2.4) 17 points
 - c. (R + 1.5) to (R + 1.9) 14 points
 - d. (R + 1.0) to (R + 1.4) 11 points
 - e. (R + .9) or less 8 points

5. Project included by Virginia Economic Development Partnership or the Virginia Department of Business Assistance as part of initiatives to bring or expand industry in Virginia. 10 points

6. Non-State Contributions to Track Construction

- | | |
|-------------------|-----------|
| a. 41% or greater | 10 points |
| b. 31% to 40% | 8 points |
| c. 21% to 30% | 6 points |
| d. 11% to 20% | 4 points |
| e. 10% or less | 2 points |

7. Contributes to the long term viability of a branchline 10 points

Note: Any applicant receiving less than 50 points will not receive a favorable recommendation from the staff unless there are extenuating circumstances.

In the event that two or more projects receive identical scores, the Fiscal Stress Index developed by the Commission on Local Government may be used to determine funding priority.

- o Forms of property control other than ownership will be considered.
- o These situations will have to be studied on a case by case basis due to the potential for loss of connecting service.
- o Use unemployment data for the latest available period.

APPENDIX B
SAMPLE LOCALITY RESOLUTION

**SAMPLE RESOLUTION FOR LOCAL SUPPORT OF THE UTILIZATION OF
INDUSTRIAL ACCESS RAILROAD TRACK FUNDS**

A RESOLUTION OF THE
(name of political subdivision and governing board, council, or transportation district here)

WHEREAS, (name of industry) HAS EXPRESSED ITS INTENT AND DESIRE TO THE (name of political subdivision and governing board, council, or transportation district here) TO LOCATE ITS COMMERCIAL, BUSINESS OR INDUSTRIAL OPERATIONS IN (name of City, County or Town), AND

WHEREAS, (name of industry) AND ITS OPERATION WILL REQUIRE RAIL ACCESS; AND WHEREAS, THE OFFICIALS OF (name of industry), HAVE REPORTED TO THE COUNTY THEIR INTENT TO APPLY FOR INDUSTRIAL ACCESS RAILROAD TRACK FUNDS FROM THE COMMONWEALTH OF VIRGINIA'S DEPARTMENT OF RAIL AND PUBLIC TRANSPORTATION IN THE AMOUNT OF \$ (amount being applied for), AND;

WHEREAS, (name of industry), HAS REQUESTED THAT THE (name of political subdivision and governing board, council, or transportation district here) PROVIDE A RESOLUTION SUPPORTING ITS APPLICATION FOR SAID FUNDS WHICH ARE ADMINISTERED BY THE VIRGINIA DEPARTMENT OF RAIL AND PUBLIC TRANSPORTATION.

NOW, THEREFORE, BE IT RESOLVED, THAT THE BOARD OF SUPERVISORS OF THE (name of political subdivision and governing board, council, or transportation district here) HEREBY ENDORSES AND SUPPORTS THE APPLICATION OF (name of industry), FOR \$ (amount being applied for) IN INDUSTRIAL ACCESS RAILROAD TRACK FUNDS; AND

BE IT FURTHER RESOLVED, THAT THE (name of political subdivision and governing board, council, or transportation district here) HEREBY MAKES KNOWN ITS DESIRE AND INTENT TO ASSIST THE COMMONWEALTH TRANSPORTATION BOARD IN PROVIDING THE MAXIMUM FINANCIAL ASSISTANCE TO (name of industry), FOR THE PURPOSE OF LOCATING ITS BUSINESS, COMMERCIAL OR INDUSTRIAL FACILITY IN (name of City Town or County).

ADOPTED:

(title of mayor or chairman, political subdivision)

CLERK

APPENDIX C
AGREEMENT

THE FOLLOWING STANDARD AGREEMENT HAS BEEN DEVELOPED AND APPROVED BY THE OFFICE OF THE ATTORNEY GENERAL AND THE FISCAL DIVISION OF THE VIRGINIA DEPARTMENT OF TRANSPORTATION. ANY APPLICANT WISHING TO RECEIVE FUNDS ALLOCATED THROUGH THE INDUSTRIAL ACCESS RAILROAD TRACKS PROGRAM MUST SIGN A COPY TO THIS AGREEMENT WITH THE APPROPRIATE NAMES DATES AND PROJECT DESCRIPTIONS FILLED IN. THERE WILL BE NO CHANGES MADE TO THE BODY OF THIS AGREEMENT EXCEPT PERTAINING TO THE APPROPRIATE NAMES, ASSIGNMENTS, DATES AND PROJECT DESCRIPTIONS, OR AT THE DIRECTION OF THE COMMONWEALTH TRANSPORTATION BOARD PRIOR TO THE APPROVAL OF THE PROJECT.

This agreement is for reference only. The actual agreement will be developed and completed by the Virginia Department of Rail and Public Transportation after the approval of the project by the Commonwealth Transportation Board.

AGREEMENT

INDUSTRIAL ACCESS RAILROAD TRACK

Virginia Department of Rail and Public Transportation

And

Applicant: (Name of Applicant)

(Name of Political Jurisdiction), Virginia

INDUSTRIAL ACCESS RAILROAD TRACK AGREEMENT

THIS AGREEMENT, made and executed in triplicate as of the (Date of Approving Board Meeting), between the VIRGINIA DEPARTMENT OF RAIL AND PUBLIC TRANSPORTATION, hereinafter referred to as "Department," acting by and through its Director, and (Name of Applicant) hereinafter referred to as "Applicant"

WITNESSETH THAT:

WHEREAS, Applicant proposes to construct an industrial access rail facility to serve the (Applicant's) facility in the (Name of Political Jurisdiction), as set out in its application dated the (numerical date) day of (month), (year), which is incorporated herein by reference, and desires that the Department participate in the funding thereof; and

WHEREAS, in accordance with § 33.1-221.1:1 of the Code of Virginia (1950), as amended, industrial access railroad track funds may be provided for the construction of such a facility; and

WHEREAS, it is desired by the parties hereto to define the extent of the project addressed herein, the responsibilities of each party, the manner of performing the necessary work, the method and time of payment, and to set out additional conditions associated with the use of industrial access railroad track funds.

NOW, THEREFORE, for and in consideration of the covenants and agreements hereinafter set forth, it is agreed between the parties hereto as follows:

- § 1. The project and interest to be funded under the terms of this Agreement are described as follows:
- Beginning at the (Name of Serving Railroad) clear point, construction including some rehabilitation of (approximate number)± feet of track as described in Applicant's application. The work thus described hereinafter referred to as the "Project" and the cost and expenses in connection therewith are hereinafter referred to as "Project Expense." Said costs and expenses

shall be limited to a maximum of \$(Board Approved Amount) for reimbursement by the Department.

- § 2. The plans and specifications for this project are identified as follows:
- A. (Description and reference to project drawing and site plan here) Any other plans and specifications developed for this Project will be forwarded to the Department for approval and will be attached to this document.
- § 3. The foregoing plans and specifications shall meet the approval of the serving Railroad.
- § 4. The Applicant is responsible for construction or having reconstructed the Project proposed under the application. The Applicant is responsible for the payment of all contractors prior to submitting invoice to Department for reimbursement. The Department will reimburse the Applicant for actual paid Project cost upon receipt of the Applicant's invoice and on-site inspection of Project by the Department. Copies of contractors' paid invoices must be attached. The Department will only accept invoices for completed Project. Progressive or partial invoices from Applicant will not be paid.
- § 5. Any work necessary in connection with the Project which is not specifically provided for in § 4 shall be the responsibility of the Applicant or the Applicant's designated representative as may be mutually agreed upon by said parties. All work shall be done in accordance with the plans and specifications referred to in § 2 hereof, together with such other plans and specifications that may be agreed upon by the parties hereto to carry out the work fully in accordance with the intent of this Agreement and in accordance with good engineering practices.
- § 6. Industrial access railroad track funds shall not be used for the purchase of right of way or the adjustment of utilities for this Project. The Applicant's certification as to the right of way and, if necessary, the responsibility for utility adjustments within the termini of this Project are hereby

incorporated by reference.

- § 7. The Department shall have access to the Project at all times to inspect and to protect its ownership interest in the Project.
- § 8. Applicant shall complete the work described in § 1 within a reasonable period of time. Industrial access railroad track funds allocated to this Project shall be expended and final billing provided to the Department by (Two Years From Execution Date), and, if not expended, may be withdrawn at the discretion of the Director of the Department of Rail and Public Transportation, hereinafter referred to as "Director."
- § 9. Applicant has obtained a certification from the railroad company owning the main line track to which the Project is connected that any other carrier having trackage rights over its main track to which the Project connects shall also have unrestricted access to the Project constructed under this Agreement. Said certification is hereby incorporated by reference.
- § 10. Applicant hereby agrees to provide or have provided continuous maintenance in accordance with American Railway Engineering and Maintenance of Way Association (AREMA) standards and to assume all liability in connection with the construction and operation of the Project.
- § 11. The portion of the Project consisting of the track, ties, and other track materials which is to be constructed and funded under this Agreement and described in § 1 and § 2 shall be the property of the Department. No ownership interest in the real estate upon which the Project is situated is claimed by the Department or the Commonwealth of Virginia as a result of the Agreement. The Department's ownership interest in the improvements will be more completely defined following completion, inspection, and payment of Applicant's invoice. The Applicant must achieve the criteria as stated in its application within five years of date of Agreement. Failure to meet its stated application criteria within five years of date of Agreement qualifies Project for termination

and repayment as outlined in §16. After the initial five year period, to protect the Department's long term interest, the Commonwealth reserves the right to remove the value of its interest in the property if the tracks are not used for their intended purpose.

§ 12. The Applicant may, with the Director's written approval, which approval shall not be unreasonably withheld, purchase, relocate, sell, transfer, remove or otherwise dispose of the Project constructed under this Agreement. Any cost involved in the relocation or removal of said Project shall be borne by the Applicant or using business. In the event of sale or transfer of the Project, the Department must be provided with a contingent interest in the Project by the Applicant's successor or assign. Such contingent interest must be approved by the Department prior to the sale or transfer. Following relocation, the Department's interest will be redefined as determined by the Department. In case of removal or purchase by the Applicant or the Applicant's successors or assigns, the Department will be reimbursed the value of its interest in the Project. Said value will be determined by the Director based on the gross liquidation value of the materials in the Project at the time of sale or disposal, but in no event will the value as so determined exceed the cost of the Project at the time of installation. In the event the facilities are purchased, they shall still remain available for use by all common carriers.

§ 13. It is understood that the construction of the Project is to be financed from funds provided by the Department and expended in accordance with Department regulations. All plans, specifications, estimates of cost, award of contracts, performance and acceptance of work, and procedures in general are subject at all times to laws, rules and regulations, orders and approvals applicable to Department projects of like character. Costs incurred by the Applicant prior to the effective date of this Agreement will not be paid unless prior approval has been given by the Director. Applicant shall render its paid bills for actual costs and expenses for the Project in accordance

with the Department's accounting procedures (i.e., Federal-Aid Highway Program Manual, Volume 1, Chapter 4, Section 3, of the Federal Highway Administration and revisions and supplements thereto). Any items paid to Applicant by the Department and subsequently found not to be in accordance with said regulations by the Department in their final audits will be promptly refunded to the Department by Applicant upon submission of the items so disapproved. Applicant shall render its bill directly to the Department, and the Department agrees to pay said bills within a reasonable time upon receipt as provided by law.

- § 14. Upon fifteen (15) days notice to the Applicant, the Department may terminate, in whole or in part, the assistance under this Agreement at any time it is determined that the Applicant has failed to comply with any provision of this Agreement. The Department shall notify the Applicant promptly in writing of such a determination and the effective date of the termination. The Applicant may request reconsideration by notifying the Director within 45 days of the date of the Department's notification. The Director shall not terminate assistance until after the request has been reconsidered but may withhold funds in the interim.
- § 15. The Applicant may terminate the Project at any time with respect to future assistance or with respect to funds not yet drawn upon by notifying the Director in writing.
- § 16. If the Project is terminated by the Applicant or the Department, the Applicant will reimburse the Department for all funds received for the Project within 60 days following notification by the Department of the amount to be reimbursed.
- § 17. Project Monitoring and Inspection will be governed by the following:
- A. The Applicant shall monitor the Project and each of its contractors to ensure compliance with this Agreement and that each contractor abides by its contract.
 - B. The Director or his designated representative may take any action, including the making

of visits to the Project site and the inspection of all books and records of the Applicant, and any contractor or subcontractor, relating to any project or task receiving funds under this Agreement, to review activities under this Agreement and the adequacy of the Applicant's monitoring efforts.

C. The Applicant shall inspect or shall have inspected the work to:

- (1) Ensure that it complies with the contract specifications.
- (2) Verify quantitative measures of materials installed, such as tie counts.
- (3) Verify labor and materials changes for contracts providing for payment on an actual cost basis.

D. If the serving railroad or the Director determines that any material or construction is not in accordance with AREMA and serving railroad standards, the Applicant shall replace materials or correct any workmanship necessary to cure the deficiency. The Applicant shall not use any industrial access railroad track funds to pay for a replacement or correction required under this subsection

§ 18. Assignment of any portion of the work or provisions of this Agreement by contract or subcontract shall have the prior approval of the Director or his designated representative. Such approval shall not be construed to relieve the Applicant of any responsibility for the fulfillment of this Agreement. Contracts and/or subcontracts shall include all pertinent provisions of the Agreement and the Applicant shall be responsible for compliance with those provisions.

§ 19. The Applicant shall at all times observe and comply with all Federal, State and local laws, regulation, ordinances, orders and decrees applicable to the work or subsequent operation, and shall indemnify, defend and hold harmless, the Commonwealth, the Department of Rail and Public Transportation, and its officers, agents, and employees against any and all claims of

liabilities arising from or based on the violation or any such law, regulation, order or decree, whether by persons constituting the Applicant, the employees of the Applicant, or any independent contractor engaged by the Applicant or associated with the Applicant in the performance of the work performed under the terms of this Agreement, including the nondiscriminatory provisions set forth in this Agreement, and in the subsequent operation of rail service.

§ 20. The Applicant shall be responsible for all damage to life and property due to its activities and those of its subcontractors, agents or employees, in connection with the work performed under this Agreement and subsequent operation of rail service. Further, it is expressly understood that the Applicant shall indemnify, defend and hold harmless the Commonwealth of Virginia, the Department of Rail and Public Transportation, its officers, agents, and employees from and against all damages, claims, suits, judgements, expenses, actions and costs of every name and description, arising out of or resulting from any negligent act or omission in the performance by the Applicant or its subcontractors of the work covered by this Agreement and the subsequent operation of rail service. Acceptance of the work by the Department of Rail and Public Transportation shall not waive any of the rights of the Department contained in this Section nor release or absolve the Applicant from any responsibilities or duties contained in the Agreement.

§ 21. The applicant shall maintain all books, documents, papers, accounting records, and any other evidence, showing actual time devoted and supporting the cost incurred. Such books, documents, papers, accounting records, etc., shall be consistent with commonly accepted business accounting practices. Such information shall be made available at their respective offices at all reasonable times during the Agreement period and for a period of five (5) years from the date of final payment by the Department to the Applicant for audit and inspection. Copies of such information

shall be furnished to the Department upon request.

- § 22. No member, officer, or employee of the Virginia Department of Rail and Public Transportation, during his tenure or one-year thereafter, shall have any interest, direct or indirect, in this Agreement.
- § 23. This Agreement shall, in all respects, be governed by the laws of the Commonwealth of Virginia.
- § 24. If any term or provision of this Agreement is determined to be invalid, illegal or unenforceable, it shall not affect the legality of validity or enforceability of any other part of this Agreement, and the remaining parts of this Agreement shall be binding upon the parties to this Agreement.
- § 25. This Agreement, when properly executed, shall be binding upon the parties hereto and their respective successors and assign.

THIS AREA BLANK

IN TESTIMONY WHEREOF, the parties have caused this Agreement to be executed in triplicate, each by its duly authorized officers, all as of the day, month, and year hereinabove first written.

COMMONWEALTH OF VIRGINIA
Department of Rail and Public
Transportation

WITNESS

(Name of Director)
Director

(Name of Applicant)

WITNESS

NAME

TITLE

The form of this Agreement has been approved by the
Office of the Attorney General.

The form of this Agreement has been approved by the
Fiscal Division of the Virginia Department of Transportation.

APPENDIX D

RIGHT-OF-WAY, MAINTENANCE AND LIABILITY CERTIFICATION

SAMPLE APPLICANT/INDUSTRY CERTIFICATION

(name of applicant/industry here)

(Name of applicant/industry) hereby certifies to the Commonwealth of Virginia that it will provide the right-of-way for and assume liability of any railroad tracks and associated facilities, financed by the Railroad Industrial Access Fund, that are built on its (name of county, city, or town) plant site and subsequent operations. This includes any claims or attempts to hold liable the Commonwealth of Virginia, for any matter concerning the tracks, as a result of the Commonwealth's contingent interest in the tracks. Also, (name of applicant/industry) agrees to assume sole responsibility for the continuous maintenance of these tracks.

(signature here)

Printed Name
Title

Date

APPENDIX E

APPLICATION

(ADDITIONAL COPIES OF THIS APPLICATION MAY BE SENT UPON REQUEST,
OR COPIES MAY BE MADE OF THE ENCLOSED APPLICATION)

**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF RAIL AND PUBLIC TRANSPORTATION
INDUSTRIAL ACCESS RAILROAD TRACKS**

APPLICATION

APPLICATION DATE: _____

APPLICANT: _____

CONTACT PERSON: _____

TELEPHONE NUMBER: _____

DESCRIPTION OF APPLICANT'S ORGANIZATION (CITY, COUNTY, ECONOMIC
DEVELOPMENT AUTHORITY, ETC.): _____

INDUSTRY/BUSINESS TO BE SERVED BY PROPOSED INDUSTRIAL ACCESS TRACK:

ADDRESS: _____

CONTACT PERSON: _____

TELEPHONE NUMBER: _____

PROPOSED OR EXISTING LOCATION: _____

DESCRIPTION OF PROJECT: _____

LENGTH OF PROPOSED TRACK: _____ ESTIMATED COST: _____

REQUESTED AMOUNT OF RAIL ACCESS FUNDS: _____

THE APPROXIMATE CAPITAL OUTLAY OF THE INDUSTRY TO CONSTRUCT AND EQUIP

IT'S PROPOSED NEW FACILITY: _____

THE APPROXIMATE CAPITAL OUTLAY TO CONSTRUCT AND EQUIP ITS PROPOSED EXPANSION: _____

ESTIMATED ANNUAL NUMBER OF CARLOADS AND COMMODITY TYPES TO BE HANDLED ON THE PROPOSED NEW TRACK: _____

IF A NEW INDUSTRY, THE ESTIMATED NUMBER OF PEOPLE TO BE EMPLOYED: _____

IF AN EXISTING INDUSTRY, THE NUMBER OF PEOPLE CURRENTLY EMPLOYED: _____

AND THE ESTIMATED ADDITIONAL EMPLOYMENT TO BE CREATED BY THE EXPANSION: _____

RAILROAD THAT WILL SERVE BUSINESS OR INDUSTRY: _____

=====

THE FOLLOWING DOCUMENTATION IS TO BE INCLUDED WITH THE APPLICATION:

1. RESOLUTION FROM THE LOCAL GOVERNING BODY SUPPORTING THE PROJECT AND REQUESTING THE RAIL INDUSTRIAL ACCESS FUNDS.
2. LOCATION SKETCH SHOWING THE LOCATION OF THE SITE ON AN AREA MAP.
3. DRAWING OF THE PROPOSED TRACK PROJECT SHOWING THE CLEAR POINT (S).
4. SIGNED APPLICANT/INDUSTRY CERTIFICATION
5. DOCUMENTATION THAT THE RAILROAD OWNING THE MAIN LINE TO WHICH THE PROPOSED ACCESS TRACK WILL CONNECT HAS AGREED TO:
 - A. SERVING THE INDUSTRY OR BUSINESS.
 - B. APPROVING AND/OR PARTICIPATING IN THE CONSTRUCTION OF THE PROPOSED ACCESS TRACK.
 - C. MAKING THE FACILITIES AVAILABLE FOR USE BY ALL COMMON CARRIERS USING THE RAILWAY SYSTEM TO WHICH THE INDUSTRIAL ACCESS TRACK CONNECTS.
6. BACKGROUND INFORMATION ABOUT THE BUSINESS.